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No. 10-369

Supreme Court, U.S.
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In The Supreme Court of the United States

STEVE BALDWIN and
PACIFIC JUSTICE INSTITUTE,

Petitioners,

v.

KATHLEEN SEBELIUS, in her Official Capacity as Secretary of the U.S. Department of Health and Human Services; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; HILDA L. SOLIS, in her Official Capacity as Secretary of the U.S. Department of Labor; U.S. DEPARTMENT OF LABOR; TIMOTHY F. GEITHNER, in his Official Capacity as Secretary of the U.S. Department of the Treasury; U.S. DEPARTMENT OF THE TREASURY,

Respondents.

On Petition For Writ Of Certiorari Before Judgment To The United States Court Of Appeals For The Ninth Circuit

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT

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THE COURT SHOULD GRANT THE PETITION DUE TO THE CONFLICTING DISTRICT COURT DECISIONS IN THE FOURTH, SIXTH, AND NINTH CIRCUITS

Pursuant to Rule 15.8, Petitioners respectfully submit this supplemental brief in support of their petition for writ of certiorari for the purpose of bringing to the Court's attention to the October 7, 2010, decision of the U.S. District Court for the Eastern District of Michigan in *Thomas More Law Center v. Obama*, ___ F.Supp.2d ___, 2010 WL ___, Court Doc. No. 28 (E.D. Mich.) ("*Thomas More*").[1] Contrary to the district court's decision in the case at Bar, in *Thomas More* the district court held that:

1. The plaintiffs have standing under Article III to challenge the Individual Mandate provision of the Act. *Id.* at 4-8.

2. The plaintiffs' challenge to the Individual Mandate provision of the Act was ripe for review, even though that provision does not become effective until 2014. *Id.* at 8-9.

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[1] Petitioners' counsel has been in contact with Westlaw regarding the date of publication of the opinion in *Thomas More*. Counsel was informed that the opinion would not be published for 3-14 days. Thus, in order to provide the Solicitor General with the optimum amount of time to respond, Petitioners' citation to *Thomas More* will be to the official opinion appearing in electronic format as Document Number 28 in the U.S. District Court for the Eastern District of Michigan.

In *Thomas More*, as in the case at Bar, the plaintiffs' alleged basis for standing was that they "***object to being compelled by the federal government to purchase health care coverage***." *Id.* at 5 (emphasis added). In support of its finding of standing and ripeness under Article III, the district court in *Thomas More* reasoned:

> "The economic burden due to the Individual Mandate is felt by plaintiffs regardless of their specific financial behavior. The Act does not make insurance more costly, in fact the contrary is expected; rather the Act requires plaintiffs to purchase insurance when they otherwise would not have done so. This case is distinguishable from Sanner [v. Board of Trade, 62 F.3d 918, 923 (7th Cir. 1995)] because the government is requiring plaintiffs to undertake an expenditure, for which the government must anticipate that significant financial planning will be required. That financial planning must take place well in advance of the actual purchase of insurance in 2014.
>
> Plaintiffs' decisions to forego certain spending today, so they will have the funds to pay for health insurance when the Individual Mandate takes effect in 2014, are injuries fairly traceable to the Act for the purposes of conferring standing. There is nothing improbable about the contention that the Individual Mandate is causing plaintiffs to feel economic pressure today. See Friends

> of Earth [v. Laidlaw Environmental Services, 528 U.S. 167, 184 (2000)]."

Id. at 7.

The district court in *Thomas More* provides a persuasive analogy explaining the relation of Article III to the Individual Mandate's planned 2014 effective date:

> "Parents wishing to send their child to college often start saving money for that purpose as soon as the child is born, even though the expense will not be incurred for eighteen years. And while such parents may be diligent in their saving, making many sacrifices along the way, their child might earn a scholarship to college, or decide to forego higher education, thus rendering the parents' sacrifices unnecessary. Such outcomes, however, do not diminish the real financial burden felt by the parents in earlier years."

Id. at 8.

In addressing the issue of ripeness, the district court in *Thomas More* identified the need for expediency in deciding the constitutionality of the Individual Mandate provision, which is an interest that is held not only by the plaintiffs in *Thomas More* but the government as well:

> "It certainly appears that the government has an interest in knowing sooner, rather than later, whether an essential part of its

> program regulating the national health care market is constitutional, although in this case it is not the government asking for the review."

Id. at 9.

In *Thomas More*, the district court recognized that there is no need for any further development of a factual record before the judiciary can review the constitutionality of the Individual Mandate provision:

> "This case presents a purely legal issue which 'would not be clarified by further factual development.' Therefore, this case is ripe for consideration by the court."

Id. (internal citation omitted). As they did in the district court, Petitioners argue this precise point in the petition (*see*, pp. 24-25).

Finally, the district court in *Thomas More* went on to uphold the Individual Mandate provision under Article I, section 8, clause 3, the Interstate Commerce Clause. *Thomas More*, *supra*, at 11-19.

CONCLUSION

For the foregoing reasons the petition for writ of certiorari before judgment in the court of appeals should be GRANTED.

Respectfully submitted,

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October 8, 2010